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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 708

INTERNATIONAL BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (AFL-CIO) and CARPENTERS' LOCAL 1849, &c., *Petitioners,*

v.

C. J. MONTAG & SONS, INC., HOLMAN ERECTION COMPANY, INC., CURTIS CONSTRUCTION CO., *et al.* *Respondents.*

BRIEF OF RESPONDENT CURTIS CONSTRUCTION CO. OPPOSING ISSUANCE OF WRIT OF CERTIORARI

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The respondent Curtis Construction Co. respectfully submits the following brief opposing certiorari.

QUESTION PRESENTED AS TO CURTIS

Petitioners propound two questions, the second of which (Petition, p. 3) concerns only their counter-

claim against the prime contractor, C. J. Montag & Sons, Inc., in Circuit Court of Appeals Case No. 18875, District Court No. 1274. They note at page 4 that no counterclaim is involved in the Curtis Construction matter, Circuit Court of Appeals No. 18877, District Court No. 1288. The remaining question, say petitioners, is:

> "Whether work stoppages arising out of a demand by a union that an employer assign to its members particular work already assigned to members of another union will support a judgment for damages under §§303(a)(4) and (b) of the Labor Management relations Act, 1947, in respect of any period after the two unions were no longer competing for the particular work but had agreed that it should be reassigned to members of the first union."

REASONS FOR NOT GRANTING THE WRIT

1. No conflict with another Court of Appeals is involved.

2. No important question of federal law has been decided requiring settlement by this court.

3. No federal question has been so decided as to conflict with applicable decisions of this court.

4. There has been no departure from the accepted and usual course of judicial proceedings, calling for the exercise of this court's supervision.

5. Reversal would require overturning a factual determination.

ARGUMENT

1. Petitioners cite no decision from another Circuit Court of Appeals supposed to conflict with the opinion and judgment herein. On the contrary, the Second and Eighth Circuits have held that no dispute between unions is required.

> *Vincent vs. Steamfitters' Local, etc.*, 288 F. 2d 276, 278 (CA 2, 1961)
>
> *Local 978, United Brotherhood of Carpenters, etc. vs. Markwell*, 305 F. 2d 38, 47 (CA 8, 1962)

It is not our understanding that Rule 19(b) of the Supreme Court rules extends to conflicts between a circuit court of appeals and an administrative board but nevertheless petitioners' case is based upon several National Labor Relations Board rulings, typical of which is the three-to-two decision in *Highway Truck Drivers & Helpers, Local 107*, 134 NLRB 1320. All arose under §8(b)(4)(d), of the Labor Management Relations Act, the substantive meaning of which petitioners assert, is the same as that of §303(a)(4), with which we are here concerned. This argument was destroyed in advance by *NLRB vs. Radio and Telev. Broadcast Engrs.*, 364 U. S. 573, where the Court recognized the separate and distinct nature of the two approaches to the problem, stating at page 585 that it did not "require a 'substantive symmetry' between the two" sections.

2. If petitioners' question be "important" under Rule 19(b), we think it has already been settled by this

court. In *International L. & W. U. vs. Juneau Spruce Corp.*, 342 U.S. 237, 245, it was noted that "(t)he fact that the union of mill employees temporarily acceded to the claim of the outside group did not withdraw the dispute from the category of jurisdictional disputes condemned by §303(a)(4)." We are concerned with no refusal by the Ironworkers to rig wooden forms in deference to the Carpenters' alleged rights. The Ironworkers seemed wholly content with the situation. It was the Carpenters who exercised "self-help" to enforce the supposed understanding, walking off the job because the work was assigned to others. We find no exception in §303(a)(4) of a strike to enforce an accord between unions which have divided up their common employer's work. Only a National Labor Relations Board order or certification will suffice.

3. Petitioners cite no "applicable decisions of this court" with which the opinion and judgments of the Ninth Circuit Court of Appeals are alleged to conflict insofar as they affect the respondent Curtis Construction Co. On the contrary, the Circuit Court determination seems entirely consistent with *Juneau Spruce* and *Radio & Telev. Broadcast Engrs., supra.*

4. Although petitioners complain of the Circuit Court's disposition of their counterclaim, they suggest no departure "from the accepted and usual course of judicial proceedings" as to Curtis Construction Co.

5. Seemingly, petitioners seek a review of the evidence to determine whether there was an "active dis-

pute" between the unions. In summarizing the Court of Appeals opinion, their petition states at page 9:

> "The court did not pass on the contentions of the Carpenters that §303(a)(4) . . . was intended only to apply to such jurisdictional disputes as involved an active controversy between two unions, nor on Montag's view that it must be read literally. Instead, *it supported Montag's alternative argument that* in this case *there was in fact an active dispute between the Carpenters and the Iron Workers* (our emphasis)."

Petitioners concede the evidence to be in conflict, at least in part (Petition, p. 12) and, in effect, ask this Court to reach a factual conclusion contrary to that of the Circuit Court of Appeals. But, as stated in the dissent to *Dick vs. New York Life Ins. Co.,* 359 U. S. 437, 454:

> "Questions of fact have traditionally been deemed to be the kind of questions which ought not to be recanvassed here unless they are entangled in the proper determination of constitutional or other important legal issues. In *Newell v. Norton* (US) 3 Wall 257, 18 L ed 271, Mr. Justice Grier stated the considerations weighing against Supreme Court review of factual determinations: 'It would be a very tedious as well as a very unprofitable task to again examine and compare the conflicting statements of the witnesses in this volume of depositions. And, even if we could make our opinion intelligible, the case could never be a precedent for any other case, or worth the trouble of understanding.' 3 Wall, at 267. And he issued this caveat: 'Parties ought not to expect this court to revise their decrees merely on a doubt raised in our minds as to the correctness of their judgment, on the credibility of witnesses, or the weight of conflicting testimony.' 3 Wall, at 268"

If the court should nevertheless choose to delve into this matter, it should be noted that the record is replete with statements by appellants' own people, acknowledging the existence of a "dispute" *between the unions,* extending from early April, 1957, until at least November, 1957 (Brown dep. Ex. 4, p. 6-8; Hiller dep., Ex. 5, p. 22, 28-29, 38-39, 40-41, 46-47; Tr. 31-32). Witnesses from the Ironworkers Union similarly recognized the existence of a "dispute" *between the two organizations* (Pickel dep., Ex. 8, p. 8-10, 12, 14-18; Holland dep., Ex. 7, p. 22-29, 46). Numerous references to the "dispute" *between the Carpenters and the Ironworkers* appear in the testimony of Richard James Mitchell, chairman of the National Joint Board for the Settlement of Jurisdictional Disputes (Mitchell dep., Ex. 9, p. 15-16, 21, 23, 28-29, 32, 42, 45-47).

CONCLUSION

In conclusion, therefore, respondent Curtis urges that its case falls squarely within the express language of §303(a)(4). The carpenters engaged in, induced and encouraged employees of C. J. Montag & Sons, Inc. to engage in a strike and a concerted refusal in the course of their employment to use, transport or handle goods, articles, materials and commodities or perform services, with the object of forcing and requiring Montag to assign the rigging of wooden forms to the carpenters, rather than to members of the Ironworkers Union. Curtis Construction Co., having been injured in its business and property by

reason thereof, properly recovered the damages sustained thereby (§303(b)).

Respectfully submitted,

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